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In the Supreme Court of the United States

OCTOBER TERM, 1982

COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL., PETITIONERS

v.

FEDERAL MARITIME COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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In light of developments that occurred the day we filed our Brief in Opposition, the federal respondents submit this supplemental memorandum pursuant to Rule 22.6 of the Rules of this Court.

As we noted in our earlier brief (Br. in Opp. 8), the court of appeals decision that is the subject of the petition had remanded the record to the Federal Maritime Commission (FMC). When our brief was filed, the most recent action in the case was the FMC's order reaffirming its original findings of violation and discontinuing the proceeding (*id.* at 7). On July 2, 1982, however, the Court of Appeals for the District of Columbia Circuit issued a supplemental opinion following remand in which it vacated the part of FMC's order that discontinued the proceeding. The court of

appeals further directed the Commission to defer action until this Court rules on the petition for certiorari and "until * * * [the Commission] has reached its final decision in its Docket No. 81-11 * * *," a related proceeding now pending before the FMC (Reply Br. App. 2a).[1]

The court of appeals' most recent order makes the decision below less ripe for review than it appeared at the time our Brief in Opposition was filed. Far from making final determinations with respect to the lawfulness under the shipping laws of the practices here in issue, the court of appeals made no findings on the matter and directed that the Commission defer action.[2] Implementation of the practices at issue is still enjoined pending a decision by the National Labor Relations Board on the legality of the underlying collective bargaining contract provisions (see Br. in Opp. 9). Accordingly, even if the decision below merits review, there is no reason for such review at this time.

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[1]A copy of the court of appeals' supplemental opinion following remand is appended to Petitioners' Reply Brief.

[2]Petitioners' reply brief contains characterizations of both the court of appeals' supplemental opinion and our position with respect to ...at opinion that are inaccurate. Because the opinion was filed the same day as our brief, we have had no opportunity to address these matters. We consider it misleading for petitioners to characterize as "simply untrue" our contention that the " 'proceedings on remand have concluded and the case is now pending in the court of appeals for decision on the merits.' " Reply Br. 2. Our assertion was completely true when made on the information then available. Moreover, petitioners' statement that the court of appeals "vacated the Federal Maritime Commission's decision on remand" (*ibid.*) suggests that the agency's findings were vacated. Only the "order that these proceedings be discontinued" was vacated (see Reply Br. App. 2a). The court of appeals at no point held the agency's findings to be incorrect, much less vacated any of them. It merely directed the agency to defer action and to reconsider its conclusions following this Court's action and the resolution of FMC Docket No. 81-11.

For the foregoing reasons, as well as those set forth in our Brief in Opposition, it is respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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